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PHILIP MORRIS PRODUCTS S.A. and
NICOCIGS LIMITED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re APPLICATION OF PHILIP
MORRIS PRODUCTS S.A. and
NICOCIGS LIMITED FOR ISSUANCE
OF SUBPOENAS TO FONTEM
HOLDINGS 1 B.V., FONTEM
VENTURES B.V., NJOY, INC., and
SPARK INDUSTRIES, LLC.

Case No. 2:16-MC-00005

**EX PARTE APPLICATION OF
PHILIP MORRIS PRODUCTS
S.A. AND NICOCIGS LIMITED
FOR ISSUANCE OF
SUBPOENAS TO FONTEM
HOLDINGS 1 B.V., FONTEM
VENTURES B.V., NJOY, INC.,
AND SPARK INDUSTRIES, LLC;
EXHIBITS 1-5**

[28 U.S.C. § 1782]

[Supporting Memorandum;
Declaration of Alexander John
Diebler Wilson; Declaration of
Germain D. Labat; Civil Cover sheet;
Notice of Related Parties; and
Corporate Disclosure Statement filed
concurrently herewith]

This is an *ex parte* application for an order under 28 U.S.C. § 1782(a) granting the applicants, Philip Morris Products S.A. (“PMPSA”) and Nicocigs Limited (“Nicocigs”) leave to serve subpoenas on Fontem Holdings 1 B.V., Fontem Ventures B.V., NJoy, Inc. and Spark Industries, LLC to obtain documents for use in two pending foreign proceedings.

The first pending proceeding is an opposition proceeding in the European Patent Office (“the EPO”) seeking to invalidate Patent EP 2 022 349 (“EP 349,” or “the Patent”), a patent relating to aerosol electronic cigarettes owned by Fontem Holdings. PMPSA is one of the parties seeking to invalidate the Patent in the EPO. The second pending proceeding is *Nicocigs Ltd. v. Fontem Holdings 1 BV and Fontem Ventures BV*, a suit pending in the United Kingdom for revocation of the Patent and for a declaration of non-infringement. PMPSA and Nicocigs (together, the “Applicants”) are both affiliates of Philip Morris International, Inc. which sells tobacco and nicotine-containing products in 180 countries around the world. At the highest level of generality, the Applicants’ claims in both proceedings are that the supposed invention of the Patent was not novel and was obvious in light of what was generally known in the art at the priority date.

Fontem has brought infringement claims in Germany, the United Kingdom and the United States, including at least ten separate actions in this Court, against defendants involved in the sale of e-cigarette products, including actions against

1 Njoy and Spark, who are American companies engaged in the sale of e-cigarette
 2 products in the United States. The Applicants understand that in the U.S.
 3 proceedings, Fontem has produced documents potentially relevant to the invalidity
 4 issues now being determined in the EPO and the UK Proceedings.

5 As set forth more fully in the accompanying Memorandum, and Declaration
 6 of Alexander John Diebler Wilson, the Applicants have satisfied the statutory
 7 prerequisites for application of §1782, and the discretionary factors, including the
 8 specific factors prescribed by the Supreme Court, favor granting the application.
 9 And as set forth more fully in the Declaration of Germain D. Labat, counsel for the
 10 Applicants have, pursuant to Local Rule 7-19.1, contacted counsel for the parties
 11 from whom discovery is sought and notified them of this *ex parte* application. At
 12 this time, none of the parties' counsel have stated that they intended to oppose the
 13 *ex parte* application. Accordingly, the Applicants respectfully request that the Court
 14 grant this *ex parte* application and authorize issuance of the subpoenas.

15 The Applicants submit a proposed order attached as Exhibit 1, and proposed
 16 subpoenas attached as Exhibits 2 through 5, respectively.

17 Dated: January 21, 2016

VEDDER PRICE (CA), LLP

19 By: /s/ Germain D. Labat

20 Germain D. Labat

21 Allison W. Meredith

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26 PHILIP MORRIS PRODUCTS S.A. and
 27 NICOCIGS LIMITED

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